

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KENNETH HERRERA, et al.,

Plaintiffs,

v.

CIV 03-0120 MV/LAM

PHILIP MORRIS USA INC., et al.,

Defendants.

Consolidated with:

CRUZ MARIANA LOPEZ MORALES, et al.,

Plaintiffs,

v.

CIV 03-0396 MV/LAM

PATRICIA MARIANO ORTIZ, et al.,

Defendants.

ORDER FOR ACCOUNTING

THIS MATTER is before the Court following a telephonic status conference in these consolidated cases held on April 16, 2009. Attorney John Duhigg is counsel of record for Plaintiffs in these consolidated cases and is the trustee of a master bank trust account funded with settlement proceeds for certain Plaintiffs in these cases who were minor children at the time the cases settled. Mr. Duhigg's banker for the master bank trust account is Edward Viramontes of Wells Fargo Bank in Belen, New Mexico. Pursuant to matters that transpired at the status conference, the Court has determined that it will order Mr. Duhigg and Mr. Viramontes to provide the Court with a full and

complete accounting of the net settlement proceeds allocated to the minor children in accordance with this Order.¹

IT IS THEREFORE ORDERED that Mr. Duhigg and Mr. Viramontes shall provide the Court with a signed written report, **on or before April 30, 2009**, which contains the following information:

1. The amount of money initially allocated to each minor child who was entitled to a share of the net settlement proceeds in these cases, as determined by the arbitrator, David Cantu, Esq.;

2. For each such child, the exact date and amount of each payment of net settlement proceeds made to, or for the benefit of, the child and a description of the method by which the payment was made, the name of the person who authorized the payment, the name of the person to whom the payment was made, and the name of the bank in Mexico, if any, and the names of any other persons, who handled each transaction;

3. A description of all fees and charges paid from the net settlement proceeds allocated to the minor children in these cases including, for each fee or charge, the amount of the fee or charge, the exact date the fee or charge was paid, the name of the person who authorized payment of the fee or charge, and the purpose of the fee or charge;

¹As trustee of the master bank trust account funded with settlement proceeds for the minor children in these cases, Mr. Duhigg is obligated to "maintain a ledger to ensure that the Minor Children are credited with the correct settlement shares, and that monthly and lump sum disbursements from their settlement shares by the Trustee, and interest and expenses of the Master Account, are properly accounted for." *Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition and Granting Plaintiffs' Motion for Settlement Approval Pursuant to Court Order (Doc. 232) (Doc. 241)* at 3. Mr. Duhigg is also obligated to "monitor the ages of the Minor Children and ensure that they are paid any funds remaining in their respective settlement shares in a lump sum payment when they reach the age of eighteen." *Id.* Mr. Duhigg is also obligated to file an annual report with the Court, "[n]o later than November 1st of each year," "describing all Master Account activity during the previous year." *Id.* A review of the record shows that no annual report has ever been filed.

4. A description of all interest and other earnings accrued on the net settlement proceeds allocated to the minor children in these cases including, for each item of interest or other earnings, the amount of the interest or earnings, the exact date the interest or earnings accrued, the source of the interest or earnings, and the amount of the interest or earnings allocated to each minor child;

5. The names, addresses and telephone numbers (if known) of all banks where accounts were opened for the deposit or payment of settlement proceeds allocated to the minor children in these cases, the account number of each account, and the names of all persons who had access to each account; and

6. The names, addresses and telephone numbers (if known) of all persons, banks and other entities involved in the payment of the net settlement proceeds allocated to the minor children in these cases.

IT IS FURTHER ORDERED that Mr. Duhigg shall provide the Court with a written explanation, **on or before April 30, 2009**, of why he did not inform the Court until April 16, 2009, in response to a question on that subject by the Court, that all of the remaining net settlement proceeds allocated to the minor children in these cases (previously reported by him as being \$70,721.74) had been paid to their mothers in Mexico, in lump sum payments, in February of 2008.

IT IS SO ORDERED.



LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE